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DATO' SERI ANWAR IBRAHIM

v.

TUN DR MAHATHIR MOHAMAD

B

FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ (MALAYA)
JAMES FOONG FCJ
SURIYADI HALIM OMAR JCA
[CIVIL APPLICATION NO: 08(F)-319-2009(W)]

C

24 NOVEMBER 2010
[2010] CLJ JT(5)

D ***CIVIL PROCEDURE:*** *Judgment - Grounds of judgment - Grounds of judgment delivered in the English language by court - Whether grounds of judgment form part of proceedings of court - Interpretation of the word "proceedings" - Whether includes grounds of judgment - Whether court given discretion to conduct proceedings in the English language - Whether grounds of judgment null and void - National Language Act 1963/67, s. 8 - Federal Constitution, art. 152*

E

F ***CIVIL PROCEDURE:*** *Trial - Conduct of proceedings - Grounds of judgment delivered in the English language by court - Whether grounds of judgment form part of proceedings of court - Interpretation of the word "proceedings" - Whether includes grounds of judgment - Whether court given discretion to conduct proceedings in the English language - Whether grounds of judgment null and void - National Language Act 1963/67, s. 8 - Federal Constitution, art. 152*

G ***CIVIL PROCEDURE:*** *Language - National language as language of the court - Grounds of judgment delivered in the English language by court - Whether grounds of judgment form part of proceedings of court - Interpretation of the word "proceedings" - Whether includes grounds of judgment - Whether court given discretion to conduct proceedings in the English language - Whether grounds of judgment null and void - National Language Act 1963/67, s. 8 - Federal Constitution, art. 152*

H

I ***CONSTITUTIONAL LAW:*** *Courts - Language of courts - Grounds of judgment delivered in the English language by court - Whether grounds of judgment form part of proceedings of court - Interpretation of the word "proceedings" - Whether includes grounds of judgment - Whether court given discretion to conduct proceedings in the English language - Whether grounds of judgment null and void - National Language Act 1963/67, s. 8 - Federal Constitution, art. 152*

CONSTITUTIONAL LAW: *National language - National language as language of the court - Grounds of judgment delivered in the English language by court - Whether grounds of judgment form part of proceedings of court - Interpretation of the word "proceedings" - Whether includes grounds of judgment - Whether court given discretion to conduct proceedings in the English language - Whether grounds of judgment null and void - National Language Act 1963/67, s. 8 - Federal Constitution, art. 152*

WORDS & PHRASES: *"proceedings" - Interpretation of - National Language Act 1963/67, s. 8*

This was the applicant's application for leave to appeal against the decision of the Court of Appeal dismissing his appeal against the High Court's decision striking out his defamation suit against the respondent. At the commencement of the hearing, counsel for the applicant raised the following point of law: Whether the grounds of judgments of the High Court and Court of Appeal, which were in the English language, were null and void, having regard to the provisions of art. 152 Federal Constitution ('FC') and s. 8 National Language Act 1963/67 ('NLA 1963/67'). The main thrust of his contention was that the grounds of judgment delivered by the court form part of the proceedings of court, and s. 8 NLA 1963/67 stipulates that all proceedings (other than the giving of evidence by a witness) in the Federal Court, Court of Appeal, High Court or any subordinate court shall be in the national language. He contended that this is a mandatory requirement which if breached would render the entire proceedings null and void.

Held (dismissing the point of law; striking out the notice of motion with costs)

Per Arifin Zakaria CJ (Malaya) delivering the judgment of the court:

(1) The word "proceedings" includes, among others, the institution or commencement of actions, judgments, executions and the taking of appeals or writs of error. Therefore, by definition, a "judgment" forms part of the proceedings. However, it is clear that a "judgment" must be distinguished from "reasons for judgment" or what is commonly referred to as "grounds of judgment". The distinction was made amply clear in *Lake v. Lake*, which established the fundamental principle that a party may appeal against the judgment and not against findings or statements which may be found in the reasoning given by the judge in support of a judgment or order. This was followed in *Civil Aviation Safety Authority v. Central Aviation Pty Ltd*, a

decision of the NSW District Registry of Australia. There is, hence, a clear distinction between a "judgment" and "grounds of judgment" or "reasons for judgment". Similarly, our rules of court draw such a distinction. (See ss. 62 and 63 Courts of Judicature Act 1964, r. 63 Rules of the Federal Court 1995, rr. 24 and 25 Rules of the Court of Appeal 1994, O. 42, O. 44 and O. 45 Rules of the High Court 1980 and O. 29 and O. 30 Subordinate Courts Rules 1980). In view of the foregoing, the word "proceedings" could not be interpreted to include "grounds of judgment". *Lake v. Lake* (foll); *Civil Aviation Safety Authority v. Central Aviation Pty Ltd* (foll). (paras 14-17)

(2) Even if the word "proceedings" were to include "grounds of judgment", the proviso to s. 8 NLA 1963/67 gives the court the discretion, either on its own motion or on the application of any party, to order the proceedings to be conducted partly in the national language and partly in the English language as the justice of the case demands. From the record it appeared that at both levels in the High Court and the Court of Appeal, counsel for the applicant and the respondent had asked for the courts' leave to conduct the proceedings in the English language, which the courts granted. Therefore, quite understandably the judges of the High Court and the Court of Appeal delivered their grounds of judgment in the English language. What transpired was clearly within the proviso to s. 8 NLA 1963/67 and it was, thus, not open to the party at this stage to complain about the use of the English language. However, it should be noted that in compliance with NLA 1963/67, all the cause papers filed in this case were in the national language. (paras 18-21)

(3) For the above reasons, it is not contrary to art. 152 FC and s. 8 NLA 1963/67 for the grounds of judgment to be in the English language, as in the present case. In the result, the point of law raised by the applicant's counsel was accordingly dismissed. (paras 24-25)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah permohonan pemohon untuk kebenaran merayu terhadap keputusan Mahkamah Rayuan menolak rayuannya terhadap keputusan membatalkan guaman fitnah beliau terhadap responden. Pada permulaan pembicaraan, peguam pemohon menimbulkan perkara undang-undang yang berikut: Sama ada alasan penghakiman-

penghakiman Mahkamah Tinggi dan Mahkamah Rayuan, yang dalam bahasa Inggeris, adalah batal dan tak sah, memandangkan peruntukan-peruntukan Perkara 152 Perlembagaan Persekutuan ('PP') dan s. 8 Akta Bahasa Kebangsaan 1963/67 ('ABK 1963/67'). Teras utama hujahan beliau adalah bahawa alasan penghakiman yang dicatatkan oleh mahkamah membentuk sebahagian prosiding mahkamah, dan s. 8 ABK 1963/67 menyatakan bahawa semua prosiding (selain dari pemberian keterangan oleh seorang saksi) dalam Mahkamah Persekutuan, Mahkamah Rayuan, Mahkamah Tinggi atau mana-mana mahkamah rendah seharusnya dalam bahasa kebangsaan. Beliau menghujah bahawa ini merupakan suatu keperluan mandatori yang jika dilanggar akan mengakibatkan keseluruhan prosiding batal dan tak sah.

Diputuskan (menolak persoalan undang-undang; membatalkan notis usul dengan kos)
Oleh Arifin Zakaria HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Perkataan "prosiding" termasuk, antara lain, permulaan tindakan, penghakiman, pelaksanaan dan pengambilan rayuan atau writ kesilapan. Oleh itu, mengikut definisi, suatu "penghakiman" membentuk sebahagian prosiding. Walaupun begitu, ia adalah jelas bahawa sesuatu "penghakiman" mesti dibezakan dari "sebab-sebab bagi penghakiman" atau apa yang biasanya dirujuk sebagai "alasan penghakiman". Perbezaannya telah dinyatakan dengan jelas dalam *Lake v. Lake*, yang mewujudkan prinsip asasi bahawa satu pihak boleh merayu terhadap penghakiman dan bukan terhadap dapatan atau pernyataan yang boleh dijumpai dalam alasan yang diberikan oleh hakim bagi menyokong suatu penghakiman atau perintah. Ini telah diikuti dalam *Civil Aviation Safety Authority v. Central Aviation Pty Ltd*, sesuatu keputusan Pejabat Pendaftaran Daerah NSW Australia. Terdapat, oleh yang demikian, perbezaan ketara di antara "penghakiman" dan "alasan penghakiman" ataupun "sebab-sebab bagi penghakiman". Serupa itu, kaedah-kaedah mahkamah kita juga membuat perbezaan sebegitu. (Tengok ss. 62 dan 63 Akta Mahkamah Kehakiman 1964, k. 63 Kaedah-Kaedah Mahkamah Persekutuan 1995, kk. 24 dan 25 Kaedah-Kaedah Mahkamah Rayuan 1994, A. 42, A. 44 dan A. 45 Kaedah-Kaedah Mahkamah Tinggi 1980 dan A. 29 dan A. 30 Kaedah-Kaedah Mahkamah Rendah 1980). Memandangkan ini,

perkataan "prosiding" tidak boleh ditafsirkan untuk merangkumi "alasan penghakiman". *Lake v. Lake* (diikuti); *Civil Aviation Safety Authority v. Central Aviation Pty Ltd* (diikuti).

(2) Jikapun perkataan "prosiding" merangkumi "alasan penghakiman", proviso kepada s. 8 ABK 1963/67 memberikan mahkamah budibicara, sama ada melalui usulnya sendiri atau atas permohonan mana-mana pihak, untuk mengarahkan prosiding dijalankan sebahagiannya dalam bahasa kebangsaan dan sebahagiannya dalam bahasa Inggeris mengikut keadilan kes itu. Dari rekod ia nampaknya bahawa di kedua-dua peringkat di Mahkamah Tinggi dan Mahkamah Rayuan, peguam-peguam pemohon dan responden telah meminta kebenaran mahkamah-mahkamah untuk menjalankan prosiding dalam bahasa Inggeris, yang dibenarkan oleh mahkamah-mahkamah. Oleh yang demikian, memang difahami hakim-hakim Mahkamah Tinggi dan Mahkamah Rayuan mencatatkan alasan penghakiman mereka dalam bahasa Inggeris. Apa yang terjadi jelas termasuk dalam proviso kepada s. 8 ABK 1963/67 dan, oleh itu, pihak pada peringkat ini tidak boleh mengadu tentang penggunaan bahasa Inggeris. Walau bagaimanapun, is mesti diperhatikan bahawa mengikut ABK 1963/67, semua kertas guaman yang difailkan dalam kes ini adalah dalam bahasa kebangsaan.

(3) Oleh kerana sebab-sebab di atas, ia tidak melanggar Perkara 152 PP dan s. 8 ABK 1963/67 bagi alasan-alasan penghakiman dicatatkan dalam bahasa Inggeris, seperti dalam kes semasa. Akibatnya, perkara undang-undang yang ditimbulkan oleh peguam pemohon ditolak sewajarnya.

Case(s) referred to:

Civil Aviation Safety Authority v. Central Aviation Pty Ltd NSD 160 of 2009, 2009 FCAFC 137 ***(foll)***

Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh [2010] 3 CLJ 29 CA ***(refd)***

Lake v. Lake [1955] 2 All ER 538 ***(foll)***

Lim Geak Liang v. East West UMI Insurance Bhd [1997] 4 CLJ 405 FC ***(refd)***

Zainun Dahlan lwn. Rakyat Merchant Bankers Bhd & Satu Lagi [1997] 4 CLJ Supp 279 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 62, 63, 96(a)
Federal Constitution, art. 152
National Language Act 1963/1967, s. 8

Rules of the Court of Appeal 1994, rr. 24, 25
Rules of the Federal Court 1995, r. 63
Rules of the High Court 1980, O. 42, O. 44, O. 45
Subordinate Courts Rules 1980, O. 29, O. 30

Other source(s) referred to:
Black's Law Dictionary, 7th edn, p 1221
P Ramanatha Aiyar's Advanced Law Lexicon, p 3745
Stroud's Judicial Dictionary of Words and Phrases, 7th edn, vol 3, p 1426

For the applicant - Karpal Singh (SN Nair with him); M/s Karpal Singh & Co
For the respondent - VK Lingam (VK Lashmi & Thayalan with him); M/s VK Lingam & Co

[Appeal from Court of Appeal, Civil Appeal No: W-02-609-2007]

[Editor's note: For the Court of Appeal judgment, please see Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2010] 1 CLJ 444.]

Reported by Suresh Nathan

JUDGMENT

Arifin Zakaria CJ (Malaya):

The Application

[1] This is an application for leave to appeal against the decision of the Court of Appeal dismissing the appeal by the applicant against the decision of the learned High Court Judge, striking out the applicant's defamation suit against the respondent with costs.

[2] At the commencement of the hearing before us, learned counsel for the applicant, Mr. Karpal Singh, sought leave of the court to raise for the first time a point of law which, he contended, would dispose of the application. He indicated to us that whatever may be the decision of the court on the point of law, he would not be proceeding further with the application.

[3] The point of law raised by the learned counsel, is whether the grounds of judgments of the Court of Appeal and that of the High Court, which were in the English language, are null and void, having regard to the provisions of art. 152 of the Federal Constitution ("the Constitution") and s. 8 of the National Language Act 1963/1967 ("the NLA 1963/67").

[4] Learned counsel for the respondent, Dato' VK Lingam, objected to the application contending that the applicant, is now seeking to depart from the application before the court, which is a leave application under s. 96(a) of the Court of Judicature Act 1964 ("the CJA"). He further contended that, what the applicant seeks to do here is akin to raising a preliminary objection against his own application. He said, preliminary objection, is normally raised by the opponent premised on a technical or jurisdictional ground and the applicant could not as a matter of practice raise a preliminary objection against his own application. In the alternative, he submitted, the preliminary objection should not be entertained by the court as the applicant, through his own affidavit in support of the application, did not at any time, challenge the validity of the grounds of judgments on the premise that they were in the English language.

[5] As we see it, even though in the course of argument, Mr. Karpal, stated that he is raising a "preliminary objection", it is clear that he was in fact raising an issue/point of law, challenging the validity of the grounds of judgments delivered by the courts below. If the court is with him on this, then, the application before the court could not be proceeded with as the proceedings in the courts below are a nullity. It follows, therefore, that a rehearing has to be ordered.

[6] The main thrust of his contention is that the grounds of judgment delivered by the court forms part of the court proceeding, and s. 8 of the NLA 1963/67 stipulates that all proceedings (other than the giving of evidence by a witness) in the Federal Court, the Court of Appeal, the High Court or any Subordinate Court shall be in the national language. This, he contended, is a mandatory requirement, breach of which would render the entire proceeding null and void. As a point of law, he contended, a party is free to raise it at any stage of the proceeding with or without notice. For support, he cited the Court of Appeal's judgment in *Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh* [2010] 3 CLJ 29. Even though, the preliminary objection raised in that case goes to the issue of jurisdiction, the decision supports the principle that an issue of law may be raised at any stage of the proceeding with or without notice. The stand taken by the Court of Appeal found support in the case of *Lim Geak Liang v. East West UMI Insurance Bhd* [1997] 4 CLJ 405, a decision of the Federal Court, wherein Mohamed Dzaidin FCJ (as he then was) at p. 411 stated:

It is worth noting that this issue was never pleaded and argued in the courts below. At the outset of the proceedings, Cik Zachariah, counsel for the defendant, seized the opportunity by raising an objection that it was not open to the plaintiff to argue on appeal a fresh point not litigated and decided by the courts below. We overruled the objection upon the basis that since the ground of appeal concerned the construction of condition 4 of the policy, it is within our discretion to hear the argument of the parties. For this conclusion, we are guided by the decision of the Federal Court in *Gulwant Singh v. Abdul Khalik* [1965] 1 LNS 47 (per Thomson LP at p. 58):

> A point which is not raised at the trial and which is raised for the first time in the Court of Appeal must always be most jealousy scrutinized (*The Tasmania* [1980] 15 App Cas 223 at p 225). The question of whether effect should be given to such a point is, however, one for discretion (see *Perkowski v. Wellington Corp* [1959] AC 53 at p 69) and the principles on which that discretion may be exercised have been thus set out in the case of *Connecticut Fire Insurance Co v. Kavanagh* [1892] AC 473 at p 480) (per Lord Watson):
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> > When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea.

The Issue

[7] In the present case, it is common ground that all the three grounds of judgments delivered by the courts below were in the English language. The issue is whether they contravene the provision of s. 8 of the NLA 1963/67, and hence rendering the grounds of judgments, null and void. We are of the view that this is an issue which warrants our consideration because of the serious consequences that may follow should we agree with the applicant.

[8] For ease of reference, the relevant provision of the Constitution is reproduced below:

152. National language

(1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide:

A Provided that -

(a) No person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and

B (b) Nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.

C **[9]** In illustrating his stand, learned counsel for the applicant has drawn the attention of this court to the development of the national language as the language of the courts. He submitted that, from 1957 until 1967, the language of the court is governed by art. 152(4) and (5) of the Constitution. It reads as follows:

D 152(4). Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court, the Court of Appeal or a High Court shall be in the English language:

E Provided that, if the Court and counsel on both sides agree, evidence taken in language spoken by the witness need not be translated into or recorded in English.

(5). Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.

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[10] The first enactment on national language was the National Language Act 1963. It came into force on 1 April 1963. There was no provision in the Act as regards the language of the court since the ten year period had not passed. Then, came the National Language G Act 1967, which came into force on 1 September 1967. It contains s. 8 which makes provision for the language of courts. The National Language Act 1963 and the National Language Act 1967 had since been consolidated and revised as the NLA 1963/67 with effect from 1 July 1971. Section 8 of the NLA 1963/67 reads as follows:

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8. Language of Courts

All proceedings (other than the giving of evidence by a witness) in the Federal Court, the Court of Appeal, the High Court or any Subordinate Court shall be in the national language:

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> Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language. (emphasis added)

[11] Central to the argument of counsel for the applicant is the word "proceedings" in s. 8 of the NLA 1963/67, which he maintained includes the "grounds of judgment" of the court. He relied on P. Ramanatha Aiyar's *Advanced Law Lexicon* at p. 3745 in support of his contention, where the word "proceedings" is stated to mean:

> 'Proceedings' is a word much used to express the business done in Courts. A proceeding in Court is an act done by the authority or direction of the Court, express or implied. It is more comprehensive than the word 'action', but it may include in its general sense all the steps taken or measures adopted in the prosecution or defence of an action, including the pleadings and judgment. As applied to actions, the term 'proceeding' may include – (1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of *ne exeat*; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in the action; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in code practice; (11) the taking of the appeal or writ of error; (12) the remitter, or sending back of the record to the lower Court from the appellate or reviewing Court; (13) the enforcement of the judgment, or a new trial, as may be directed by the Court of last resort. Edwin E. Bryant, The Law of Pleading Under the Codes of Civil Procedure 3-4 (2nd edn. 1899).

[12] *Black's Law Dictionary*, 7th edn., at p. 1221 defines the word "proceeding" in the following term:

> 1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.

(See also *Stroud's Judicial Dictionary of Words and Phrases*, 7th edn., vol. 3 at p. 1426)

[13] Section 3 of the Courts of Judicature Act 1964 ("the CJA") defines "proceeding" as follows:

> 'Proceeding' means any proceeding whatsoever of a civil or criminal nature and includes an application at any stage of a proceeding.

[14] From the above definitions, we may conclude that "proceeding" includes amongst others the institution or commencement of action, judgment, execution and the taking of an appeal or writ of error. Therefore, by definition "judgment" forms part of the proceeding. That we think is not in dispute. What is in issue is whether "judgment" includes "grounds of judgment".

The same Law Lexicon at p. 2503, defines "judgment" in the following term:

> 'Judgment' means the statement given by the judge on the grounds of a decree or order. (CPC (5 of 1908), s. 2(9)). The sentence of the law, or decision pronounced by the Court, upon the matter contained in the record. (3 Comm. 395, c. 24. Tomlin). A judgment in the final determination of the rights of the parties in an action.
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> A 'judgment' is a sentence of the law pronounced by the Court upon the matter contained in the record (Co. Liyy. 39 A, 168 A); and the decision must be one obtained in an *Action Ex p. Chinery* 12 QBD 342; *Onslow v. Inland Revenue*, 25 QBD.
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> (In a proper use of terms the only judgment given by a Court is the order it makes. *The reasons for judgment are not themselves judgments though they may furnish the Court's reason for decision and thus form a precedent* (*R. v. Ireland* [1970] 44 ALJR 263). See also *Lake v. Lake*, para. (8) Infra. (emphasis added)

[15] Thus, it is clear that "judgment" must be distinguished from "reasons for judgment" or what we commonly refer to as "grounds of judgment". The distinction is made amply clear by Sir Raymond Evershed MR in *Lake v. Lake* [1955] 2 All ER at p. 538:

> A party's right to appeal (which is, of course, a statutory right) is now regulated by the terms of RSC, Ord 58, r 1. That states that the appellant, may, pursuant to s. 27(1) of the Supreme Court of Judicature (Consolidation) Act, 1925, appeal from "the whole or any part of any judgment or order". Counsel for the wife strongly argued that the judgment, for the purpose of the present matter, is not the formal document which I have already read, drawn up and signed by the district registrar, but is the statement of his reasons given by the commissioner at the end of the trial and from the transcript of which I have read certain short extracts. *I will assume that the statement should be construed and read in the light of the questions and answers, which I also read, following the delivery of the so-called judgment, though I must not be taken to be saying that such a*

dialogue should necessarily be treated as part of the judgment itself. In my view, however, the argument cannot be sustained. Nothing from the cases brought to our attention by counsel for the wife persuades me that by the words "judgment or order" in the rule or in the sub-section is meant anything other than the formal judgment or order which is drawn up and disposes of the proceedings and which, in appropriate cases, the successful party is entitled to enforce or execute. In other words, I think that there is no warrant for the view that there has by statute been conferred any right on an unsuccessful party, even if the wife can be so described, to appeal from some finding or statement – I suppose it would include some expression of view about the law – which you may find in the reasons given by the judge for the conclusion at which he eventually arrives, disposing of the proceeding. If that is right, I come back again to the formal judgment or order; and, for the reasons which I have already made plain, there is no part of that document against which any appeal or, indeed, any complaint, could be made on the part of the wife. As counsel for the husband observed, the wife raised as a substantive defence, that, if she had committed adultery (though she denied it), then that adultery had been condoned, and in that matter she was successful. Indeed, on her husband's petition she was the successful party at the trial; and it may be said in mitigation of her apparent embarrassment now because of the finding of adultery, that, after all, she did succeed in one of the defences she deliberately put forward and it ill becomes her now to complain of that fact in this or any other court. (emphasis added)

[16] The fundamental principle established in *Lake v. Lake* [1955] 2 All ER at p. 538 is that a party may appeal against the judgment and not against some findings or statements which may be found in the reasoning given by the judge in support of a judgment or order. This is followed in *Civil Aviation Safety Authority v. Central Aviation Pty. Ltd.* NSD 160 of 2009, 2009 FCAFC 137, a decision of the NSW District Registry of Australia. In that case, Bennet, Flick and Mckerracher JJ held that:

The term "judgment" as it is used in ss. 4 and 24 of the 1976 Act has the same meaning as that used in s. 73 of the Constitution and refers to the formal order of a court: *Ah Toy v. Registrar of Companies* [1985] 10 FCR 280 at 285. Toohey, Morling and Wilcox JJ there observed:

> ... [T]he starting point for consideration of the competency of this appeal must be ... s. 24 of the Federal Court of Australia Act 1976. Unless there is a "judgment, decree or order", there is nothing against which an appeal may be brought. ... It is accepted that the expression "judgment, decree or order" bears the meaning which the word "all judgments, decree, order ..." have in s. 73 of the Constitution: *Molley v.*

A *Roy* [1975] 132 CLR 622 per Barwick CJ at 625. In that case Mason J, speaking of s. 46 of the Supreme Court Act (NT), said (at 639):

> However, I see no alternative but to give the word "judgment" as it appears in s. 46 its accepted legal meaning, that is, the formal order made by a court which disposes of, or deals with, the proceeding then before it: see *R v. Ireland* [1970] 126 CLR 321 at 330; *Lake v. Lake* [1955] 366 at 343-344. Any other view would, I think, disregard the similarity between the provisions of s. 46 and those of s. 35 of the Judiciary Act 1903 (Cth) which are so obviously based on the provisions of s. 73 of the Constitution where the word "judgments" is used in the same sense.

[17] There is, therefore, a clear distinction between "judgment" and the term, "grounds of judgment" or "reasons for judgment". Similarly, our Rules of Courts draw such a distinction. (See ss. 62 and 63 of the CJA, r. 63 of the Rules of the Federal Court 1995, rr. 24 and 25 of the Rules of the Court of Appeal 1994, O. 42, 44 and 45 of the Rules of the High Court 1980 and O. 29 and 30 of the Subordinate Courts Rules 1980). In view of the foregoing we are of the view that the word "proceeding" could not be interpreted to include "grounds of judgment" as contended by the applicant. This disposes the issue of law raised herein, but even if "proceedings" were to include "grounds of judgment", we need to consider further the proviso to s. 8 of the NLA 1963/67.

[18] The proviso reads as follows:

> Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language.

[19] It would appear that the proviso gives a wide discretion to the court as regard the use of the national language and the English language in any proceeding having regard to the interest of justice. The applicant's counsel, however, submitted that the proviso does not apply to the court, but only to parties to the proceeding. He, however, conceded that based on the proviso a party may be allowed by the court to conduct the proceeding partly in the national language and partly in the English language.

[20] Quite to the contrary, we are of the view that the proviso gives the court the discretion, either on its own motion or on the application of any party, to order the proceeding to be conducted partly in the national language and partly in English language as the justice of the case demands. From the record it appears that at both levels in the High Court and the Court of Appeal, learned counsel for the applicant and respondent had asked for leave of courts to conduct the proceeding in the English language. Leave was granted by the courts. Therefore, quite understandably the learned judges of the High Court and the Court of Appeal delivered their grounds of judgments in the English language.

[21] What transpired is clearly within the proviso to s. 8 of the NLA 1963/67, alluded to earlier. Therefore, it is not open to the party at this stage to complain, concerning the use of the English language. However, it should be noted that in compliance with the NLA 1963/1967, all the cause papers filed in this case, were in the national language.

[22] Finally, we wish to emphasize that the courts have always recognized the importance of the national language. (See *Zainun Dahlan v. Rakyat Merchant Bankers Bhd & Anor* [1997] 4 CLJ Supp 279).

[23] And as early as 1990, the Chief Judge of Malaya, Hashim Yeop A. Sani in the Chief Judge of Malaya's Circular No. 3 of 1990 dated 25 June 1990, directs that all Judges and Judicial Commissioners of the High Court of Malaya and Sessions Court Judges and Magistrates to submit to him at least one grounds of judgment in the national language in each month in order to identify the problem arising out of the implementation of the use of the national language in courts. This circular further reinforces our view that, judges indeed have a discretion to deliver their grounds of judgment either in the national language or the English language.

Conclusion

[24] For the above reasons, we hold that it is not contrary to art. 152 of the Constitution and s. 8 of the NLA 1963/67 for the grounds of judgment to be in the English language, as in the present case.

[25] In the result, the point of law raised by learned counsel for the applicant is accordingly dismissed. Since the applicant is not minded to proceed with the leave application, hence, the notice of motion herein is struck out with costs.